

M. TERESA DALEY LAW OFFICES, P.C.

520 Eighth Avenue, 24th Floor

New York, New York 10018

Phone: 212-560-3943 Fax: 917-351-0983

e-mail address: alawrence@newmarkkf.com

M. Teresa Daley

Andrea J. Lawrence
Of Counsel

November 3, 2010

Via e-mail at
scc.chambers@nysb.uscourts.gov

Honorable Shelley C. Chapman
United States Bankruptcy Court
Southern District of New York
One Bowling Green – Courtroom 610
New York, New York 10004

Re: In re 2626 BWAY LLC
Docket No.: 10-14731 (SCC)

Dear Judge Chapman:

We represent Broadway Metro Associates L.P. ("Broadway Metro"), a creditor of 2626 BWAY LLC ("Debtor") as well as its landlord at the building located at 2626 Broadway, New York, New York. We write to advise the Court that notwithstanding its directive to the Debtor to tender two months post-petition use and occupancy to Broadway Metro on November 2, 2010 in the sum of \$96,500 (*see* enclosed pages of transcript from the last court hearing on October 12, 2010), the Debtor has failed to do so. This is further reason for this Court to vacate the automatic stay currently in place.

Respectfully,



Andrea J. Lawrence, Esq.

cc: Robert Sasloff, Esq. (via email and first class mail)
M. Teresa Daley, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: Case No. 10-14731-scc
Chapter 11
2626 BWAY, LLC,
Debtor.
.....
BROADWAY METRO One Bowling Green,
ASSOCIATES L.P., New York, New York 10004
Tuesday, October 12, 2010
11:13 a.m.
.....

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor:

ROBERT R. LEINWAND, ESQ.
Robinson Brog Leinwand Greene
Genovese & Gluck, P.C.
875 Third Avenue
New York, New York 10022
(212) 586-4050

ROBERT M. SASLOFF, ESQ.
Robinson Brog Leinwand Greene
Genovese & Gluck, P.C.
875 Third Avenue
New York, New York 10022
(212) 586-4050

For Broadway Metro
Associates:

ANDREA J. LAWRENCE, ESQ.
M. Teresa Daley Law Offices,
P.C.
520 8th Avenue, 24th Floor
New York, New York 10018
(212) 560-3943

M. TERESA DALEY, ESQ.
M. Teresa Daley Law Offices,
P.C.
520 8th Avenue, 24th Floor
New York, New York 10018
(212) 560-3943



ESQUIRE
DEPOSITION SOLUTIONS
an Alexander Gallo Company

One Penn Plaza Suite 4715 New York, NY 10119
212.687.8010
www.esquiresolutions.com

An Alexander Gallo Company

1 MS. DALEY: Prorated.

2 THE COURT: Well if it's prorated then he's got to
3 pay the prorate for September. He's got to pay October and
4 he's got to pay what's due on November 1st. So he's got to
5 pay the prorate for September, plus two months.

6 MR. LEINWAND: If it's prorated, the stub rent
7 (indiscernible) will pay the --

8 THE COURT: The stub plus the two months.

9 MR. LEINWAND: I'll pay the two months. It -- I
10 don't want -- the argument made -- the argument made and not
11 finally decided by this Circuit or not finally decided by the
12 Third Circuit is that since the payment date is the first day
13 of the month, then the balance of that month is in fact an
14 administration expense, but not a --

15 THE COURT: An expense for the purposes of
16 365(d)(3)?

17 MR. LEINWAND: That's correct. And that's the
18 argument that was made. That was the argument in -- what was
19 the name of that (indiscernible) in Bali (phonetic) and that
20 was the argument that the Second Circuit has adopted on the
21 Second Circuit level.

22 THE COURT: All right, here's what I'm going to
23 do. I'm not going to rule one way or the other on that
24 today. And we're going to roll that question over into the
25 subsequent hearing. But clearly, the two payments that have



1 to be made, clearly are the October and the November. So
2 that's 48,250 times 2.

3 MR. LEINWAND: Right. We understand that, Your
4 Honor.

5 THE COURT: Right? And that'll be due on the 60th
6 day, which is November 2nd. Right?

7 MR. LEINWAND: I've got to add 60 --

8 THE COURT: It is.

9 MR. LEINWAND: -- September has 30 days.

10 THE COURT: October's got 31 days.

11 MR. LEINWAND: Okay. There you go.

12 THE COURT: So, I think November 2nd is the 60th
13 day. Am I doing it right, Miss Daley?

14 MS. DALEY: Yes, Your Honor.

15 THE COURT: Okay. And look, that's the price of -
16 - that's the cost of renting this courthouse to have a
17 Chapter 11 case. Otherwise, you get to go back to state
18 court and fight until the cows come home or until somebody
19 renders a final judgment over there. But if you're filing a
20 Chapter 11 petition and the statute makes clear what your
21 obligations are as a debtor in possession, those have to be
22 complied with before you get to the next step.

23 So the next step is going to be that promptly
24 after the November 2nd day we're going to have an evidentiary
25 hearing to determine either whether the stay should be lifted

